IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.436 OF 2006 WITH C.A.NO.479 OF 2006

Grant Apparel Private Ltd.
..Petitioner/Second Trnasferor Co.
WITH
COMPANY PETITION NO.437 OF 2006 WITH C.A.NO.480 OF 2006

Pioneer Embroideries Ltd.
..Petitioner/Transferee Company.

Mr. Amit Vyas with Mrs. S. Pandey i/by Rajani Associates for the Petitioners.

Mrs. K.V.Gautam, Dy.O.L. present.

Ms. Madhuri Gaikwad i/by Pankaj Kapoor for the Regional Director.

CORAM : R.S. MOHITE,J.
DATED :1ST DECEMBER,2006.

P.C.

1. Company Petition No.436 of 2006 is filed by Grant Apparel Private Ltd. which is the transferor company and Company Petition No.437 of 2006 is filed by Pioneer Embroideries Ltd. which is the transferee company Both these petitions have been filed under Sections- 391 to 394 of the Companies Act,1956 and seek sanction of this court to a Scheme of amalgamation between the transferor and the transferee company. I am informed that one other transferor company by name Royal Embroideries Pvt. Ltd. has filed a petition for sanction of the same scheme of amalgamation in the High Court at Karnataka and that the said scheme has already been sanctioned by the Karnataka High Court. This statement is made by the

Advocate appearing in the present petitions and is accepted though the order is not produced.

2. On perusal of the papers, I find that the requisite procedure has been followed. The Regional Director has been served with the copy of the petitions and the Regional Director has filed two affidavits dated 19.10.2006 and 9.11.2006. The objection is taken by the Regional Director that the transferee company is listed on the Stock Exchanges at Mumbai,Delhi, Kolkatta and Ahmedabad but has submitted the NOC from the Bombay and Ahmedabad Stock Exchanges and the NOC from Delhi and Kolkatta have not been produced. In this regard, it appears that the need to file for approval of the stock exchanges in question are required by clause 24(f),(g) and (h) of the said listing agreements. My attention is drawn to the Judgment of (Vazifdar S.J., J.) in the case of Chemidye Mfg. Co. Pvt. Ltd., Thirumalai Chemicals Ltd. reported in 2006(2) B,.C.R. 554. In this case this court has taken a view that once a copy of the proposed scheme to be filed before any court or tribunal is filed with the Stock Exchange for approval at least a month before the court then mere non grant of approval does not come in the way of filing of a petition under Section 391. The view is also taken that there is nothing either in listing agreement or in Securities Contracts (Regulation) Act which indicates that non

compliance of terms and conditions of a listing agreement would ban a company from making an application under sections 391 and 394 for merger . In Paragraph 23 of the judgment this court has held that in a given case, it may be possible to contend that such non compliance with the provisions of clause 24 of the Listing Agreement has resulted in prejudice to the concerned parties and that it would be open to the company court to take the same into consideration while deciding whether or not to sanction a scheme for amalgamation. In the present case, scheme transfers all the losses and assets to the transferee company which is a listed company. It is sought to be argued that it will not cause any prejudice as the share value of the transferee company is based upon consolidated balance sheet of the transferor and the transferee company since transferor company is 100% subsidiary and is not a listed company itself. Reliance is also placed upon the judgment in the case of Compact Power Sources Pvt. Ltd. reported in 2004 (52) SCJ 139 (AP) in which the Single Judge of the Andhra Pradesh High Court has taken a view that terms of Clause 24 of the Listing Agreement, consent of Stock Exchange is not compulsory and it would suffice if company files scheme/petition under Sections 391,394 and 101 before Stock Exchange, a month before it presents scheme/petition before Court or Tribunal for its approval. In the present case on behalf of the

company, it has been placed on affidavit that an application was made to the Delhi Stock Exchange on 3.12.2005 and the Kolkatta Stock Exchange on the same day. Both the petitions have been filed after expiry of the period of one month i.e. 12.6.2006. In this background, the Advocate appearing for the Regional Director states that she is not pressing the objection raised as she is unable to contend that prejudice will be caused to anybody in the facts of this particular case.

3. After petitions have been advertised no objection has been received to the grant of these petitions. In the circumstances, I find no reason as to why the petitions should not be allowed particularly when the scheme has already been sanctioned by the Karnataka High Court. In the circumstances, both the petitions are allowed in terms of prayer clause (a) to (k) and stand disposed off. Both the petitioners will pay Rs.2500/- each to meet the costs of the Regional Director. In addition, the petitioner in Company Petition No.436 of 2006 will pay further amount of Rs.2500/- to meet the costs of the Official Liquidator. All costs as aforesaid to be deposited with the concerned authorities within a period of four weeks from today.

4. Drawn up order is dispensed with. Parties to act on

a ordinary copy of this order duly certified by the Company Registrar of this Court. Both the petitions stand disposed off.

(R. S. MOHITE, J.)